

SETTLEMENT AGREEMENT

BETWEEN THE GOVERNMENT OF THE VIRGIN ISLANDS DEPARTMENT OF PLANNING AND NATURAL RESOURCES AND NAUTILUS, INC.

WHEREAS, the Complainant, the Department of Planning and Natural Resources (DPNR), is responsible for the administration and enforcement of laws and regulations pertaining to the protection and preservation of the coastal resources of the United States Virgin Islands, including the Coastal Zone Management Act (hereinafter “the CZM Act”), Title 12, Chapter 21, of the Virgin Islands Code;

WHEREAS the Division of Coastal Zone Management (CZM) is a division of DPNR;

WHEREAS, Respondent, Nautilus, Inc. (hereinafter “Respondent”) is ~~a~~ duly incorporated in and conducts its affairs registered limited liability company conducting business in the United States Virgin Islands.

WHEREAS, Respondent is a person as that term is defined in Section 902 of the Coastal Zone Management (CZM) Act.

WHEREAS, Respondent is the owner of property described as Little St. James Cay, on St. Thomas, Virgin Islands (hereinafter “the Property”).

WHEREAS, Little St. James Cay is located within the first tier of the Coastal Zone.

WHEREAS, on or about December 8, 2011 personnel from the divisions of Coastal Zone Management and Fish and Wildlife conducted a site visit at Little St. James Cay.

WHEREAS, upon inspection, such personnel found what they believed to be excavation at the shoreline and ~~that~~ near shore soil disposal at the cay ~~had occurred~~.

WHEREAS, further inspection revealed that a track hoe had been operated ~~operations~~ at the northern point of Little St. James, Cay.

WHEREAS, ~~DPNR/CZM concluded that the foregoing activities work conducted~~ at Little St. James Cay listed herein constitutes a violation of the Coastal Zone Management Act;

WHEREAS, NOVA-01-12-STT was issued by DPNR/CZM on February 24, 2012, and served on Maria T. Hodge, attorney-in-fact for Nautilus, Inc., on March 8, 2012;

WHEREAS, attorney Hodge submitted on April 4, 2012, a Request for Hearing and Answer to request an informal conference to comment on the allegations of NOVA-01-12-STT and promote early resolution.

WHEREAS, a meeting was held on April 24, 2012 with Director, Jean-Pierre L. Oriol, Legal Counsel Winston Brathwaite, and Special Projects Coordinator, Alex Holecek and negotiations ensued;

WHEREAS, the parties recognize that this resultant Agreement has been negotiated in good faith and that it is fair, reasonable and in the public interest.

NOW, THEREFORE, DPNR and NAUTILUS, INC. agree as follows:

1. Parties Bound

This Agreement shall be binding upon each of the parties and their successors and assigns. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to legally bind the party he or she represents.

2. Civil Penalty Assessment

Respondents shall pay a stipulated penalty in the amount of FIFTY THOUSAND and 00/100 DOLLARS (\$50,000.00). Additionally all corrective actions below must be taken:

3. Corrective Actions ~~[See point c below, do we have to provide a plan for removal if under 3c below it is determined that it is best to leave the fill. Amy told me today that she thinks that c is the likely~~

outcome of her evaluation. Maria, please give m your thoughts about the obligation above to take “all corrective actions below” including providing a plan of remediation and filing permits in 3a and 3b when the point in c below is a likely outcome. I spoke to Amy this morning and she said she thinks that she is likely to come out that it would be better not to do any removal. So then the issue becomes how to document reasonable cost of removal. Do we put that in this agreement? Thoughts on how you want to redraft this section, Maria?]

- a. Respondent must submit a plan for the removal of the illegally filled area identified in NOVA-01-12-STT to CZM. The plan must include the methods of removal, at the end location for the material being removed, the erosion and sediment control measures to be installed, and the expected length of time for the removal process.
[what if Amy determines that it is best not to remove?]
- b. Respondent shall apply for all territorial and federal permits necessary to perform the removal of the filled area. [if Amy is coming out now with her determination that leaving in place is the best option, then no permit need be applied for. I am just wondering whether we give Amy’s findings as soon as they are ready and then simply a determination that better left in place and an agreed cost for funding a coral project. On the other hand, I wonder how much if anything Army Corps and Fish and Wildlife

know already and if we agree her that it is better left in place and then Army Corps comes back and says remove, we have now agreed to pay for Coral mitigation, and might have to remove if Army Corps requires it. Thoughts, Maria?

- c. If it is determined that the fill in the area is best left in place, Respondent shall fund a coral restoration project in an amount not less than the cost of the removal of the filled area. [WHO MAKES THIS DETERMINATION? WHAT IF THERE IS CONFLICTING DETERMINATIONS AMONG AMY, DPNR AND/OR ARMY CORPS? MARIA, ANY THOUGHTS ON HOW TO DEAL WITH THAT ISSUE?]

4. Non-Compliance with other Applicable Laws

This Agreement in no way relieves Respondent of its responsibility to comply with any other applicable federal or territorial laws, regulations and permits not specifically mentioned herein, and compliance with this Agreement shall not constitute a defense to any action pursuant to said laws, regulations, or permits. [As we know, resolution of this matter will not resolve any Army Corps exposure, so do we get DPNR to agree that we need not take any removal action, which will not require permits from Army Corps, hoping that Army Corps will not issue its own NOVA as it had done in the past with respect to the Rip Rap south of the dock, for example?]

5. Release

Upon compliance with all terms and conditions of this agreement, Respondent, its predecessor in interest, L.S.J., LLC ("LSJ"), and the stockholders, directors, ~~members,~~ officers,

members, managers, employees and agents of each of them, shall be released from civil and criminal liability for the specific violations of the Act mentioned in NOVA-01-12-STT.

6. Covenant Not to Sue

In consideration of the actions that will be performed by Respondents under the terms of this Agreement, and except as specifically provided in Paragraph 7 of this Agreement, DPNR covenants not to sue or to take administrative action or seek criminal penalties against Respondent or LSJ, or any of the stockholders, directors, officers, ~~their~~ members, managers, officers, employees or agents of them, for violations of the Act, relating to any violation alluded to herein. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of ~~its~~ their obligations under this Agreement.

7. Reservations of Rights by DPNR-CZM

DPNR reserves and this Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within the Covenants Not To Sue in Paragraph (6). Notwithstanding any other provisions of this Agreement, DPNR reserves all rights against Respondent and this Agreement is without prejudice to all rights against Respondent with respect to:

- a. Liability for failure of Respondent to meet a requirement of this agreement.
- b. Liability for future violations (occurring after the date of the violations listed in NOVA-01-12-STT referenced herein) and,
- c. Liability for damages or injury to, destruction, or loss of natural resources, and for costs of any natural resource damage assessments. [should we delete this paragraph c since it would continue to open Nautilus to liability

for damage to Coral for example and the purpose of the settlement would be to resolve all matters relating to the complained of events, including, any loss of coral, etc.?]

Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Government of the Virgin Islands may have against any person, firm, corporation or other entity not a signatory to this Agreement other than LSJ and the members, managers, employees and agents thereof. This Settlement Agreement does not limit or affect the rights of Respondents or the Government of the Virgin Islands against any third parties not named herein, nor the rights of third parties not parties to this Agreement against any other parties.

8. Modification

This Agreement contains the entire agreement of the parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of the Agreement shall not be used in any action involving the interpretation or enforcement of the Agreement. All modifications to this Agreement shall be in writing and signed by the Parties.

9. Jurisdiction

This Agreement shall be construed and its performance enforced under laws of the U.S. Virgin Islands.

10. Representations

Each person executing this Agreement represents that the party on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute the Agreement on his or her behalf.

IN WITNESS WHEREOF, the parties hereto are authorized and have executed this Agreement on the day and year below.

NAUTILUS, INC.

Its: May _____, 2012

DEPARTMENT OF PLANNING AND NATURAL RESOURCES

JEAN-PIERRE L. ORIOL, DIRECTOR
DIVISION OF COASTAL ZONE MANAGEMENT
May _____, 2012

ALICIA BARNES, COMMISSIONER
DEPARTMENT OF PLANNING AND NATURAL RESOURCES
May _____, 2012